DISCUSSION OF THE CITY CHARTER

THOMAS I. PARKINSON, Legislative Drafting Bureau, Columbia University:

Mr. McAneny's talk has been interesting, I am sure, to every one who has heard it. It has been particularly interesting to me because it is the most comprehensive statement of general proposals for revision of the New York charter that has been presented since the charter revision commission reports of 1907 and 1909.

This whole question of a city charter, and particularly the revision of the charter of the city of New York, involves two main problems. One is the determination of the broad questions of policy involved in formulating a basic organization for the government and its general powers and duties. The other is the statement of those conclusions of policy so that they may dovetail into that great mass of local legislation referred to by President Butler which now makes up our charter and much of which exists outside of our charter. The revision commissions of 1907 and 1909 gave most of their time to the consideration of broad questions of policy, and I should say their revision probably failed of enactment largely because they gave so little time to the consolidation of the great mass of local legislation which affords so many opportunities for persons who are opposed to a proposed revision to object to it on specific grounds. The Gaynor committee, on the other hand, directed its attention particularly to the revision of all existing legislation applicable to the city, with the design of making it more intelligible both to the layman and to the city official.

Most of the important bills for the amendment of the city charter which have been considered by the legislature in the past few years have been based upon the proposals of the commissions of 1907 and 1909. Some of Mr. McAneny's proposals this afternoon were first suggested by those commissions, but the comprehensive statement of the policies which should underlie reorganization of the city government which he has given us this afternoon is the first thing of its kind that I have heard or seen for at least five years. I think it an extremely important contribution both to these lectures and to the subject of city charter revision, but I want to emphasize what is perhaps a hobby of mine, and that is that before any thorough revision of our city charter can be adopted the great mass of local legislation inside the charter and outside the charter relating to the city government must be thoroughly studied and consolidated. If this mass of local legislation is not got under con-

trol it will torment the proponents of any new charter and in all likelihood defeat their efforts. This is particularly the work of a city agency and it is to be hoped that it has been undertaken and is under way, or will shortly be undertaken by the charter committee of which Mr. McAneny is chairman.

The need for some change in the relation of the city to the state and particularly in relation to the power of the legislature by special legislation to impose mandatory requirements on the city was never more forcibly presented to the public mind than during the session just ended. The difference of opinion between state officials and the city administration, though based primarily on the question of state taxes, has resulted in a lack of co-operation between them on the details of important legislation affecting the city. The governor vetoed the garbage contract bill on the ground that under its indefinite terms the city might assume financial responsibilities which it could not afford at this time; and for this action he was severely criticized by the city officials. On the other hand, the mayor vetoed the supplies purchasing bill providing for purchase of all city supplies by a central agency, which has passed the legislature after several years of effort to bring about this much-needed reform. Similar differences of opinion between the legislative leaders and the city officials seem likely to result in the failure of the bill designed to eliminate duplication and unnecessary expense in the inspection of buildings within the city. State and city officials in an earnest effort to make necessary compromises of their individual ideas might have secured some, at least, of these important reforms, the defeat of which by one mode or another seems to the ordinary citizen to be bound up in some manner with the direct-tax controversy.

It would have been advantageous to the future revisers of the city charter to have had the benefit of some experience under these proposed changes in the organization and powers of the city government. Unquestionably the situation suggests the importance of a constitutional amendment either restricting the power of the legislature to interfere with the administration of purely local business or granting to the city the power to make and amend its own charter.

The experience of the few past years and of the most recent charter revision commissions and committees indicates only too clearly the difficulty of preparing a charter which would have a reasonable chance of approval at the hands of the people of the city or the city officials and which could at the same time run the gauntlet of the state legislature. The differences of official opinion during the session just closed have only emphasized the possibilities of political juggling on important city meas-

ures and the difficulty of securing a completely revised charter from the legislature.

Home rule is an elusive sort of panacea. The city is demanding home rule in the sense that it be free from domination in Albany. Brooklyn is equally alert for home rule in the sense that it be free from domination by the board of estimate sitting in Manhattan. Home rule in the sense of freedom from legislative interference in matters of detail will unquestionably receive serious consideration from the constitutional convention, and will probably result in action at least restricting the legislative power to interfere, but home rule means also to many people the power of the city to adopt its own charter. Whether this power also be granted to cities by the constitutional convention, or whether they must as heretofore secure the general charter of municipal government from the legislature, the problems of studying existing legislation and of working out in detail proposals for amendment are the same. The problem of securing adoption by the legislature or adoption by the people may be different, but in either event the difficulty of this problem will be materially lessened by a thorough and complete mastery in detail of existing local law. With particular ideas for the amendment of the charter I am now concerned only to the extent that I should like to see all the suggestions of every one presented, studied and intelligently passed upon by just such a committee as that of which Mr. McAneny is chairman. What I want particularly to emphasize is that when the conclusions of this committee have been reached, they should be expressed in clear, precise and effective statutory language and should be dovetailed into or substituted for the great mass of detailed legislation in or outside the charter relating to the city, its organization, powers and duties.

Because Mr. McAneny has so fully covered the subject of the city charter from the points of view in which you are most interested, as an illustration of what I have in mind I am going to say something about a topic which is uppermost in the public mind at the present time.

The constitution of the state of New York authorizes the state to issue bonds for highway purposes. The purpose of the constitutional convention of 1894 when it authorized the state to issue these bonds for highway improvements was unquestionably to spread equally over a period of fifty years the taxes which would provide for the redemption of those bonds. There is no doubt about the spirit of that provision or the purpose of the members of the convention, but when that provision was formulated in the constitution, it read like this: "Provided a sinking fund be established for their redemption and at least two per cent per annum be paid into that sinking fund." The formulation of that

provision was detail, and too many of us after we have settled the question of general policy are unwilling to give time to detail. It seemed a simple mathematical computation that if the state were to have a hundred per cent in the sinking fund at the end of fifty years, then it should pay two per cent each year into the fund. It is a perfectly simple mathematical calculation, but it unfortunately does not take into consideration the fact that every cent paid into the fund this year draws interest for each succeeding year until the end of the fifty-year term. The result is that under the apparently harmless provision carrying out the general spirit of the convention's decision, if the state goes on paying into that fund two per cent per annum, the necessary funds for the redemption of those bonds will be available in about twenty-five instead of fifty years. In other words, whereas the convention intended that the taxes to redeem those bonds should be spread over fifty years, they will, in fact, be spread over only about twenty-five or twenty-six years, because contributions at the rate of two per cent are going to produce a sum sufficient to redeem the entire bond issue, not in fifty years but in half that time. And so it is with the other sinking funds of the state of New York. They contain at the present moment an excess over their requirements, according to the state comptroller's report for the year ending September 30, 1914, of about twenty-nine millions. They actually contain over thirty-four million dollars, while they need according to the comptroller's computation less than five million dollars at the present time, leaving an excess of about twenty-nine million dollars over the requirements of those funds. The annual payments have been far in excess of the amounts needed for the redemption of outstanding bonds and they must continue to be in excess, because the constitution provides that a certain sum shall be paid annually into the sinking fund, or the laws passed in pursuance of the constitutional provision provide that a certain sum shall be annually appropriated or raised by taxes for those funds.

The state sometimes needs the benefit of the city's experience, and I am taking advantage of this opportunity to throw out for what it is worth the suggestion that the state follow the action of the city a few years ago when it amended its charter under similar circumstances to provide for the transfer of just such excess funds in the city's sinking fund to the general fund for the reduction of taxation. Precisely the same situation existed in the sinking funds of the city of New York in 1907. By reason of pledges of particular income to the city sinking funds there had accumulated in them many millions in excess of their then requirements. Their assets were sacredly pledged to the payment

of the bonds charged against them. The city charter declared the existence of a contract between the city and its bondholders not to divert any of the assets or income of these funds. It was obvious, however, that no purpose would be served by continuing to heap up in the sinking funds a huge surplus in excess of their requirements. The financial and legal difficulty was overcome by a highly technical amendment to the city charter which authorized the sinking fund commissioners to invest its surplus funds in general fund bonds. These general fund bonds are obligations of the city, but they do not bear interest and they are to be cancelled when the sinking fund which holds them has paid off the bonds chargeable against it. No objection has been raised to this scheme, under which many millions of excess moneys in the sinking funds have been turned over to the general fund for the reduction of taxation. Is it not possible for the state to secure the funds heaped up in the state sinking funds by excess appropriations or taxes during the past few years, by transferring such surplus to the general fund and issuing to the sinking funds bonds similar to the general fund bonds used for the same purpose in the city? It will, of course, be objected that the transfer of these excess funds will be a violation of the state's obligation to its bondholders, or the provision of its constitution and statutes. But precisely the same objection was urged against the city's making use of the surplus in its funds. Nevertheless it was accomplished with justice to all parties and to the relief of current taxpayers.

As a matter of fact there is not any violation of the provisions of the constitution or the statutes involved in this proposal. Annual appropriations or taxes at rates which have proved excessive must continue to be paid into these funds, but when so paid in it is proposed that they be invested in general fund bonds instead of in highway or canal bonds. If these general fund bonds are ever needed to fulfil the purpose of the sinking fund they can be enforced against the state, but if not needed they would be cancelled when the bonds chargeable to the fund are fully redeemed. The net result as shown by the city's experience is simply to transfer to purposes for which they are needed excess funds raised by current taxes for purposes for which they are not needed.

The unquestionable purpose of constitutional and statutory provisions authorizing fifty-year bonds redeemable from sinking funds is that taxes for redemption of such bonds should be spread over the full term of fifty years. It happens that the letter of these provisions violates their spirit in that the taxpayers of the past few years and of the current and immediately succeeding years are paying much more towards the redemption of these bonds than is required for their redemption at the

end of fifty years. These tax provisions are as if the bonds were authorized for twenty-five years rather than fifty years. While their provisions cannot be amended, except possibly by the constitutional convention, the city's experience suggests that it is practical to transfer the excess to the reduction of current taxes without violence to either the spirit or the letter of the law. Some amendments of existing constitutional provisions respecting state debt will probably be necessary before such a transfer can be satisfactorily accomplished. However, I refer to the matter at this time for the purpose not of solving the state's problem but of illustrating the embarrassing consequences of failure to give attention to details in the drafting of such documents as constitutions and charters.

RICHARD S. CHILDS, Secretary of the National Short Ballot Organization:

The last sincere attempt to rewrite the charter of New York city was wrecked upon the rock of borough autonomy. The rock is still there. It showed itself in the attempt to decentralize the tenement house department and the fire prevention bureau in the Lockwood-Ellenbogen building inspection bill. It showed itself in opposition to the abolition of the coroner. We shall not be able to abolish the archaic institution of county government without encountering it.

In 1902, when the present charter was four years old, it was amended to give the borough presidents their present administrative powers, but in spite of that large concession there has been continuous dissatisfaction among the boroughs outside of Manhattan. An extreme exhibition of that discontent is shown in the attempt of Rockaway to secede from the city. The average Manhattanite is apt to regard this discontent in somewhat the same way as an English Tory looks upon the discontent of Ireland, as irritating and unnecessary.

Borough autonomism is partly a kind of provincialism which is largely the reaction from the supreme provincialism of the Manhattanite, who devoutly believes that New York city is a long narrow tongue of land bounded by the East and North Rivers. Borough autonomism is partly a survival of the old days before consolidation. It is partly a sound and wholesome theory that government should be as local as possible, inasmuch as democratic institutions work better the nearer they come to the people, in ways geographical as well as otherwise. Just as the state should stick to state affairs and leave the cities free to work out their own salvation, so, they contend, the cities should leave to the boroughs everything which is not clearly a city function, incapable of distribution

to the smaller units. And partly, borough autonomism is an instinctive localism which might as well be reckoned with as a feature of human nature, and harnessed for a good use.

Of course, the great impediment to borough autonomy is the fact that the outside boroughs are not willing to pay their own autonomous ways. Neither is the city willing to have them. Every city must invest in the development of its outskirts at the expense of the older central section, in order to provide for the growth of the city. The demands of the younger boroughs for money, however, at the expense of Manhattan grow less each year as the city fills up, and I believe we are reaching a point where we can ignore the differences in the tax rate which would ensue and allow each borough to raise its own taxes and spend them for all local improvements, including street paving, sewers, parks, street cleaning and public buildings. The city, however, should reserve to itself the power to regulate or take over from the boroughs anything which it deemed to be a city affair. The city, for example, should be free to lay out a city plan for the main through routes and parkways of the city, to which plan the boroughs would have to conform in laying out local projects. The city also should be free to take care of such a parkway system, to pave it and plant it and clean it. The city would also take care of such buildings as a museum which it deems to be a city institution as distinguished from a borough institution like the borough hall.

As the borough presidents cannot be allowed, single handed, to levy and expend taxes, there must then be created a borough commission of at least three members. Such a board should be limited in function to determination of policies and should carry out those policies through the medium of a borough manager appointed by the commission and holding office at its pleasure. The borough commission in the larger boroughs, Brooklyn and Manhattan, might properly be somewhat larger, five members, or seven, in which case they should be elected in rotation or from districts, so as to keep a wieldy district and a short ballot. A joint meeting of all the borough commissions might constitute a good substitute for the board of aldermen. It could not, however, assume the powers of the board of estimate as the supreme board of directors of the city unless there were added to its number a group of members to represent the city as a whole to balance the localism of the borough members. In England, where the ward-elected council is universal, the councils increase their membership one-third by the election of aldermen who have longer terms expiring in rotation.

Such a scheme to my mind is much preferable to electing any officers at large by popular vote in a city as big as this. Election at large in

New York city, or even in any of the boroughs, with the exception of Richmond, gives us the "unwieldy district." An unwieldy district is one so large that no one but a multi-millionaire can be a candidate independently with any hope of success. If we are ever to get rid of Tammany Hall in this city, we must make it unnecessary, and that means making the Republican machine and the committees of one hundred unnecessary also. We must create conditions where a candidate with only ordinary resources and an improvised, temporary organization, can run for office with some hope of success, without being compelled to go hat in hand to petition for the royal endorsement of Tammany Hall or a Committee of One Hundred or any other strongly-financed standing organization. Free competition for public office does not and never can exist in such colossal electoral units as these. Under such conditions big campaign funds and a standing army of political mercenaries are indispensable adjuncts to success in a political campaign.

The present condition is more unfortunate than we sometimes realize. Every four years there is a gigantic paroxysm of civic effort to defeat Tammany once more. We hazard everything, double or quits, on the single personality of our candidate for mayor. If Mr. Mitchel had said some foolish thing during the last campaign or if some scandal had been turned up in his past life, the history of the whole city for the next four years might have been radically changed. Likewise after election our charter makes us hazard too much on single personalities, and the shape of the future city and the adequacy of its great arteries of communication depend too largely upon the happy fact that Mr. McAneny's health did not collapse during the great subway negotiations.

So, under our present charter we get intermittent good government, and Chicago, with its powerful board of aldermen elected from compact wards at a separate election, is in some ways nearer to stable good government than we are. We are living now in a fool's paradise, cheerfully taking it for granted that Tammany will never come back and that the splendid administrative reforms of the present era could not possibly be quietly slipped into the discard by the next administration. A new charter, if put into effect in time for the next municipal election, can prevent reaction, but it must do so not by the printing of endless words minutely regulating the procedure of future municipal officers, but by broadening the base of the pyramid of government, founding it securely upon popular consent, bringing it nearer to the people, geographically and in every other way, and so arranging the field of politics that the people can deal directly with their candidates without the intermediation of a Tammany Hall or a committee of one hundred.